

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL TERENCE MOORE,

Defendant-Appellee.

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UNPUBLISHED

October 3, 2000

No. 222893

Oakland Circuit Court

LC No. 1999-166580-FH

Before: McDonald, P.J., and Sawyer and White, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted the sentence imposed on defendant's plea-based convictions of felon in possession of a firearm, MCL 750.224f; MSA 28.421(6), and felonious assault, MCL 750.82; MSA 28.277. We vacate defendant's sentence and remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The charges against defendant resulted from an altercation in which he physically assaulted Lori Golden, his girlfriend, and threatened to shoot her. Defendant was notified that the prosecution would seek to enhance his sentence pursuant to MCL 769.10; MSA 28.1082. The trial court evaluated the case pursuant to *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993), and stated that it would be inclined to sentence defendant to a term in the county jail with work release, domestic violence counseling, and probation.

Because the offenses with which defendant was charged occurred after January 1, 1999, the legislative sentencing guidelines applied. MCL 769.34(2); MSA 28.1097(3.4)(2). The sentencing guidelines for the offense of felon in possession recommended a minimum term range of ten to twenty-eight months. The court sentenced defendant to two years' probation, with the first six months in jail. Defendant received credit for forty-one days. When informed that the sentence was below the guidelines, the court inquired as to whether complainant approved the sentence. When told that she did, the court stated that it imposed the sentence that it did because the victim requested it.

A court may depart from the legislative guidelines if it has substantial and compelling reasons to do so, and states those reasons on the record. MCL 769.34(3); MSA 28.1097(3.4)(3). A court may

not depart from the legislative sentencing guidelines based on certain specified factors, including race and gender. MCL 769.34(3)(a); MSA 28.1097(3.4)(3)(a). Otherwise, what constitutes substantial and compelling reasons supporting departure is not defined in the context of the legislative sentencing guidelines. In the context of controlled substance offenses, substantial and compelling reasons for departing from the guidelines include, but are not limited to, circumstances that mitigate the defendant's culpability, and the defendant's age, prior record, and work history, and post-arrest cooperation. Substantial and compelling reasons must be objective and verifiable. *People v Fields*, 448 Mich 58, 68, 76-77; 528 NW2d 176 (1995). The existence or nonexistence of a factor is a factual determination that is reviewed for clear error. The determination that a factor is objective and verifiable is reviewed as a question of law. The determination that factors constitute substantial and compelling reasons to depart downward from a minimum term is reviewed for an abuse of discretion. *Id.*, 77-78.

We vacate defendant's sentence, and remand for resentencing. A sentence within the legislative guidelines is strongly presumed to be proportionate. Absent an error in the scoring of the guidelines or reliance by the trial court on inaccurate information, such a sentence must be affirmed. MCL 769.34(10); MSA 28.1097(3.4)(10). Complainant's support for defendant was in the nature of family support, and thus was an appropriate factor for the court to consider when determining whether a departure from the guidelines was warranted. *People v Shinholster*, 196 Mich App 531, 535; 493 NW2d 502 (1992). However, the court first pronounced sentence and then, after being informed that the sentence was below the guidelines, inquired as to whether complainant approved the sentence. Prior to imposing sentence, the court did not find on the record that substantial and compelling reasons existed to depart below the guidelines. Moreover, the court failed to explain its reasons for concluding that complainant's support justified a departure from the guidelines. Absent such an explanation, we are unable to determine whether the court abused its discretion by departing from the guidelines.

Defendant's sentence is vacated, and this case is remanded for resentencing in accordance with this opinion. We do not retain jurisdiction.

/s/ Gary R. McDonald

/s/ David H. Sawyer

/s/ Helene N. White